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Current Topics.

LAW LIBRARIES.

IN these days those responsible for the preservation of the libraries of the various Inns of Court have necessarily been compelled to face the problem of how best to conserve intact the valuable works in their custody, and the only secure measure would appear to be evacuation—at all events of those volumes which by their rarity or otherwise possess a special value. This, to some extent, is a drastic step, for it precludes the use of the libraries by the majority of those who in normal times habitually make use of them. Lawyers cannot get on satisfactorily without their books or without ready access to them, nor can the judges, and this calls to mind the story of the member of the Bar crossing the Strand with a bundle of books under his arm. Noticing this, a waggish friend said to him, "Oh, I thought you barristers knew all the law and did not require books," to which came the witty reply : "So we do; these are for the judges!"

THE INNS OF COURT.

IN an address to the Historical and Literary Circle of the Devonshire Club on 23rd July, Sir CLAUD SCHUSTER, Clerk of the Crown in Chancery and permanent secretary to the Lord Chancellor, made some observations with regard to the havoc wrought by enemy bombs in the Inns of Court. He said that one was moved both to sorrow and anger to such an extent at seeing the abomination of desolation in the holy place as to force one to cry in the words of old time : "Oh, God, the heathens are come unto thine inheritance; Thy holy temple have they defiled; they have laid Jerusalem on heaps. The dead bodies of Thy servants have they given to be meat unto the fowls of the heaven, the flesh of Thy saints unto the beasts of the earth. Their blood have they shed like water round about Jerusalem." The four Inns were best known as the dwelling-places of Charles Lamb, Arthur Pendennis, George Warrington, and many Dickens characters. They had played, and still played in their ruin a greater part in our national history than that of places of sentimental or literary association. It was largely through them that English law had been nourished to its vigorous manhood. Sir Claud said that Gray's Inn and Middle Temple Halls had had two of the most beautiful interiors in the world. These had gone, but the spirit in which they had been built, the soul of freedom which had there found its nourishment, the service to justice and to the rule of law which in them had been taught, the geniality and easy fellowship which within these walls had banished strife, and the great tradition passed on from generation to generation. Nothing can kill the spirit of which these buildings, beautiful and stately as they may be, are mere outward manifestations, and the independence and freedom which has given the Inns of Court their elastic unwritten constitution and a similarly adaptable unwritten constitution to the country as a whole can never be extinguished by fire bombs or any other creations of the nether world.

POOR PERSONS' DIVORCES.

THE Lord Chancellor's Department has sent a general statement to the Council of The Law Society on the subject of the loss of papers in poor persons' divorce cases as a result of enemy action. Every case must be dealt with individually and with reference to its particular circumstances, but the statement describes a course followed in an actual case which may serve as a precedent as regards the formal documents in other cases in which the Registrar has already granted a certificate. The following documents must be lodged afresh : (1) copy of the petition; (2) copy of the petitioner's affidavit in verification (this need not be resworn); (3) copy of the marriage certificate; (4) affidavit(s) of service where the process server is not to be called as a witness. The solicitor or the District Registrar or both, as the case may require, should certify that the following documents were lodged with the application for the Registrar's certificate—(1) affidavits of service where the process server is to be called as a witness; (2) poor persons' certificate; (3) affidavit of venue asking for trial at a particular assizes in a particular month; (4) certificate by the solicitor for the petitioner that there are no proceedings relating to the petitioner's children except as stated; (5) search for appearance of the respondent and the Registrar's certificate that no appearance has been entered; (6) search for appearance of the co-respondent and the Registrar's certificate that no appearance has been entered; (7) solicitor's certificate that no proceedings had been instituted by or against the petitioner with reference to the marriage; (8) form setting the cause down for hearing in the undefended list at a special place in a named county; (9) order for venue and Registrar's certificate which had been filed for the Registrar's signature. The District Registrar should certify that the documents lodged have been destroyed by enemy action and that before this occurred he had granted a certificate and that no appearance had been entered, or as the case may be. With regard to identification of photographs, it is impossible, says the statement, to lay down any general rule, but if leave is obtained from a judge before or at the trial to use as the petitioner's evidence, in his absence overseas, an affidavit in which he has already identified a photograph showing the respondent and the co-respondent together, the gap can be filled in by affidavit by the solicitor proving that the same photograph was that identified by the process server, or the witness to the adultery, or both as the case may be.

LANDLORD AND TENANT (WAR DAMAGE) BILL.

ON the Committee stage of the Landlord and Tenant (War Damage (Amendment) Bill in the Lords on 22nd July, the Lord Chancellor moved an amendment to cl. 1 (5), which was subsequently agreed to, by which the functions of a local authority in issuing a certificate that a dwelling-house has been repaired so as to create a presumption of fitness may be exercised on behalf of the authority by officers authorised in writing, so that a meeting of the authority would not be necessary in order to grant each separate certificate. With regard to certain amendments to cl. 2, also agreed to, the Lord Chancellor recalled that on second reading he explained that a tenant might hesitate whether he should disclaim his lease until he knew whether there was going to be a money payment in respect of the damage done. If public funds were going to provide for repairing premises, that would be a reason why he should retain his lease; if, instead, he was only to get his share, at the end of the war, of compensation, that might be a reason why he would hesitate to retain his lease. His lordship said that the effect of the amendments was to secure that the tenant who wanted to preserve his right to disclaim might exercise that right when he knew what was the final determination, and might not be caught by an intermediate decision that might be varied. The EARL OF ILCHESTER elaborated his criticism of the application of the provisions of the principal Act with regard to disclaimer of leases to ground leases, which we made in a letter to *The Times* of 30th June, and to which he referred in a Current Topic in our issue of 19th July (*ante* p. 301). The contract of the

ground landlord with his tenant, he said, was more on the land than on the building, and yet, because the building disappeared, the contract was to be made null and void. That, his lordship said, was a hard provision, and pressed more hardly on the small owner than on the large owner. He suggested that some arrangement might have been made whereby no rent would be payable until the house was rebuilt at the end of the war, when compensation had been paid, and then a similar number of years might be added at the other end to the period of the lease. The Lord Chancellor replied that the real principle of the clause was that when misfortune of the sort to which he referred occurred, it really had got to be borne by all who were interested. VISCOUNT MAUGHAM added to this that he had something to do with the principal Act, and admitted quite frankly that, in this respect, the present Bill was an improvement. It might be added, as we stated in our previous topic, that the ground landlord has his rights to compensation under s. 9 (2) of the War Damage Act, 1941, and has no right to any extra privileges, which, as the Lord Chancellor said, would not be recognised by the rest of the community as fair.

DESTRUCTION OF DEEDS AND DOCUMENTS.

FULL advantage has been taken of The Law Society's arrangement for copying deeds and documents by a special photographic process, referred to in the February issue of *The Law Society's Gazette* and in our issue of 15th March. The current issue of *The Law Society's Gazette* records that over 382,000 photographs have been taken at The Law Society's premises, and 110,000 elsewhere, in accordance with the arrangement. In a number of cases the original documents were destroyed after being photographed, and in one case the destruction of the originals took place on the night after the photographing process was completed. According to *The Law Society's Gazette*, experience has shown that two of the greatest difficulties confronting solicitors who have lost all their offices and contents are, first, that of ascertaining how the balance standing to the credit of the client account is made up, and secondly, that of preparing bills of cost when the draft entries have been destroyed. Photography counters both these difficulties, as both the ledger and the draft entries may be copied. In the case of deeds, wills and other documents of clients which are in the possession of solicitors, the Council of The Law Society announces that it sees no professional objection to a solicitor's sending a circular letter to his clients informing them that he proposes to have their deeds and documents photographed, and, with the client's consent, to debit the client with the appropriate sum in respect of the photography of that client's documents. The Council also points out that deeds and documents are not insurable under the War Damage Business Scheme, as the definition of "goods" in s. 95 of the War Damage Act expressly excludes money, negotiable instruments, securities for money, evidences of title to any property or right or of the discharge of any obligation, or any documents owned for the purposes of a business. The present form of the definition, the Council states, is largely due to representations made by the Council, and the position was most satisfactory, since, instead of it being necessary to expend money on insurance premiums to cover the risk of destruction of documents by enemy action in circumstances where it is probable that in the event of their destruction no payment will be made until after the war, the owner of the documents is at liberty to spend the money which he would otherwise have had to pay out in insurance upon photographic or other copies of the documents which will be immediately available in the event of the destruction of the originals. For those who have not yet employed The Law Society's service, it will be useful to recall that the cost of the work is £5 per thousand exposures if the work is done at the Hall of The Law Society and £7 per thousand exposures where it is done elsewhere.

WAR DAMAGE CLAIMS.

A STATEMENT on behalf of the War Damage Commission has cleared up a misunderstanding as to the precise meaning of a question on the forms C.2 and C.2/V on which claims for war damage to land and houses are made. The question is: "What is the estimated approximate cost, at present-day prices, of reinstating the damaged property in the form in which it was immediately before the damage?" The phrase "estimated approximate cost," it is stated, does not mean an estimate as a surveyor or architect would understand it, but merely an indication which would enable the Commission to form a preliminary opinion of the extent of the damage. When temporary repairs are carried out, the Commission expects that any builder who does them will be willing and able to indicate to the claimant, without special examination or additional expense, a round-figure sum. This is all that the Commission requires, and it has no power to pay any cost incurred for obtaining assistance in the preparation of a claim. It was made clear at the end of April, when the War Damage Commission published the forms for making claims under Pt. I of the War Damage Act, 1941, that Form C.1, which is the simplified equivalent of Form V.O.W.1, only required an expression of opinion as to the extent of the damage, and any mistake in forming such an opinion did not prejudice the claimant. Forms C.2 and C.2/V relate to temporary works payments and cost of works payments, the former being sent in response to Form C.1 and the latter in response to V.O.W.1. The statement does not mean that professional assistance may be entirely dispensed with in completing those forms, and even if the expense of employing legal and other experts is not a recoverable item of cost, the resultant effect will more than justify the cost. All that the statement means is that the estimate required by the forms is nothing more than an estimate, and can no more bind the claimant than a suggested round-figure sum given by a builder can bind the parties in negotiations preliminary to a contract.

FIRE PREVENTION.

CRITICISMS of the Fire Prevention (Business Premises) Order have now brought forth an official statement that the Minister of Home Security is appointing a committee to make suggestions and that the Trades Union Congress General Council has accepted an invitation to nominate members to serve on the committee. As recently as 18th June the secretary of the London Trades Council said at a conference of that body that people who had evacuated to safer quarters, leaving others to watch their property in the danger areas, were evading their responsibility. It was to be deplored, he said, that in the drafting of an order affecting millions of workers, no attempt had been made to consult the trade unions. He added that a drastically revised order, if not indeed an entirely new order, was needed, and asked whether the Minister ever stopped to reason why there was such widespread reluctance on the part of volunteer fire-watchers to sign the agreement giving a local authority the right to send them to any part of the district for duty. Miss ELLEN WILKINSON, Joint Parliamentary Secretary to the Ministry of Home Security, stated at Jarrow on 20th June that since the order was made there had been a great deal of consultation, for which there was no time in the desperate conditions which prevailed at its making. Miss WILKINSON said that the demand that all fire-watching should be paid for at night and overtime rates might seem reasonable, but where did it lead? If one set of watchers was paid these rates, all should be. This could not stop at business premises. Two millions of people were fire-watching, and in addition another 1,500,000 were part-time civil defence workers, doing longer hours, who had been giving their time freely since the beginning of the war. Thus, nearly 4,000,000 people would have to be paid, and all at their different rates for ordinary occupations. The result would be chaos and friction. The whole thing was national service. There can be little doubt that there are numerous discontents regarding the operation of the Fire Prevention (Business Premises) Order, and it is good to know that the matter is receiving official attention in consultation with the interests most involved. The reorganisation and improvement of the country's fire services under the Fire Services (Emergency Provisions) Act, 1941, will do much indirectly to place the services of fire-watchers on a more satisfactory footing by reducing the terrible risks to which they are subject in some areas. In any revision of the present order the whole problem should be considered in all its aspects so that any necessary burdens placed on the civil population may bear equally on employers and employed and on both present and absent owners of premises.

RECENT DECISIONS.

IN *Graham and Others* v. *Arnott*, on 21st July (*The Times*, 22nd July), Macnaghten, J., held that payment for articles to newspapers describing a betting system were not exempted from taxation by reason of the decision in *Graham* v. *Green* [1925] 2 K.B. 37 (in which it was held that income from private betting was not taxable even if it was the sole source of a person's income), and was subject to income-tax under Schedule D.

In *The Albionic* on 21st July (*The Times*, 22nd July), Langton, J., and the Trinity Masters held that where the master of a ship left his ship with twelve of the crew when a fire had broken out on board, and he was unfit to attend to his duties, and had told the crew to "jump for it," there was no "constructive abandonment," so as to entitle the wireless operator who, with others, had been left on board, to claim remuneration for salvage services rendered after the alleged abandonment.

In *R.* v. *National Arbitration Tribunal, ex parte Bolton Corporation*, on 23rd July (*The Times*, 24th July), the Court of Appeal (MacKinnon and du Parcq, L.JJ., and Bennett, J.) held, reversing a decision by the Divisional Court, that where an award was sought by a local authority's officers from the National Arbitration Tribunal to compel the authority to agree in advance that every officer who, at a future date, should be called up should *ipso facto* enjoy the advantages which the authority was empowered in its discretion to give under the Local Government Staffs (War Service) Act, 1939, of making up their Service pay to the level of their civilian pay, the dispute was not a "trade dispute," and the applicants were not "workmen" within the Conditions of Employment and National Arbitration Order, 1940 (No. 1305), as the effect of the award would be to deprive the corporation of their right to exercise their discretion in individual cases. The court held that the application by the local authority for an order of prohibition directed to the National Arbitration Tribunal to prohibit the tribunal from adjudicating on the "dispute" should be granted.

Criminal Law and Practice.

PRICE CONTROLS AND ULTRA VIRES.

THE enlarged scope of the criminal law during an emergency period such as the present is highly necessary though no doubt somewhat unpalatable to persons who are used to their freedom. The Defence (General) Regulations, 1939, and the Emergency Powers (Defence) Act, 1939, under which they were made were passed in the interests of the community, and in times of great stress the needs of the community come before many of the liberties which were and will again become familiar in normal times.

By s. 1 (1) of the Emergency Powers (Defence) Act, 1939, His Majesty is given power to make, by Order in Council, such regulations as appear to him to be necessary or expedient "for securing the public safety, the defence of the realm, the maintenance of public order and the efficient prosecution of any war in which His Majesty is engaged, and for maintaining supplies and services essential to the life of the community."

Under the latter words of the last sentence, reg. 55 of the Defence (General) Regulations, 1939, was made, providing that "a competent authority, so far as appears to that authority to be necessary in the interests of the defence of the realm or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by order provide (*a*) for regulating or prohibiting the . . . use or consumption of articles of any description, and, in particular, for controlling the prices at which such articles may be sold."

A point was recently taken before the Lincoln justices that reg. 55 was *ultra vires* and void. This contention was considered on a case stated to the Divisional Court on 9th April, 1941 (*T. P. Gilbert & Son, Ltd.* v. *Birkin* (1941), 2 All E.R. 489).

On this Humphreys, J., said that there was one article which everyone would agree was a supply essential to the life of the community, namely milk. He asked if it could be seriously doubted that, if milk could be sold at any price which the vendor could induce a rich person to pay him, "there would very soon be such a shortage of milk that poor people and the children of the poor, who require it, would find a terrible shortage of that essential commodity." That, his lordship said, was not far removed from what was being dealt with in the present case, namely feeding stuffs, within the Feeding Stuffs (Maximum Prices) Order, 1940. One may add, without prejudice to what has been said about the validity of the Order, that it cannot be doubted that profiteering in essential foodstuffs in war-time is a crime against the community, and it is satisfactory to know that the law recognises this.

The argument on behalf of the appellant was that the mere fixing of maximum prices does not tend to maintain supplies. The court was asked to take judicial notice of the fact that the fixing of maximum prices was said to have the opposite effect in certain cases.

Tucker, J., expressed the opinion that the case before the court was a very good example of the way in which the fixing of maximum prices should tend, or might tend, to maintain essential supplies. In the case of cattle food, his lordship said that the fixing of maximum prices should result, and anybody so fixing the prices would contemplate that it would result in getting an even and constant supply of food for their cattle. If that was the result, that would further result in a greater output of milk and a more even output of milk throughout the country, and that again would result in the maintenance of an essential supply Cassels, J., also held that the regulation was valid.

WHAT ARE FEEDING STUFFS?

In the same case a question was argued as to the scope of the Feeding Stuffs (Maximum Prices) Order, 1940. The conviction was for selling home-grown beans contrary to the order. It was not disputed that the defendants had sold home-grown beans at a price higher than the maximum price permitted by the order. The sale was between dealer and dealer and it was stated on each invoice that the beans were sold by the appellants to the purchasers for seed purposes. The same words also occurred on the invoice under which the appellants bought the seeds from a grower. "Beans, home-grown other than cluster or tie beans," figured in the schedule to the order, and the maximum price was £10 per ton. It was not suggested that the beans in question were cluster or tie beans.

It was argued for the appellants that it could never have been intended that, in all circumstances and for all purposes a maximum price should be fixed for the sale of home-grown beans by something which had no special reference to home-grown beans at all, but was a feeding stuffs order, and which contained reference to a very great number of articles, of which beans were only one. There was, counsel said, no finding of fact that the beans in question were feeding stuffs, or that they were sold as feeding stuffs or that they were intended for use as feeding stuffs.

Humphreys, J., pointed out that when once the appellants had parted with the beans they had no control over the use which was made of them by the purchaser, and they did not pretend that they had. All that the invoice statements went to substantiate was that it was the intention and desire and understanding of the appellants that the persons to whom they sold the beans would sell them to somebody else, who would probably use them for seed purposes, and nothing more. As there was a finding that the transaction was bona fide and honest, it could be taken that the sale was such that the beans were intended for seed purposes.

It was further argued that the order would have the effect of prohibiting the sale by greengrocers of home-grown beans at more than a maximum price which worked out at little more than 1d. a pound, which was an absurd price in the shops.

Humphreys, J., pointed out that he had learnt that morning that the Minister of Food, realising that the order was too wide, had revoked it by the Home Grown Beans (Control and Maximum Prices) Order, 1940, dated 28th August, 1940. Paragraph II of the amending order provided that the maximum prices prescribed by the order should not apply to beans bought by or sold to a grower or approved buyer for use as seed. This, said Humphreys, J., was an indication that the lumping together in one expression of "home-grown beans" of beans which were intended for use as seed and beans which were intended for food for cattle as if they were all one and the same thing and all feeding stuffs was an error, and had in fact been rectified. Humphreys, J., thought that the conviction was right, as home-grown beans were a specified feeding stuff within the schedule.

He added, however, that if it were found that beans or any other article could not be used as feeding stuffs, the mere fact that they appeared in the schedule would not induce him to say that an offence was committed by the sale of feeding stuffs. Similar judgments were delivered by Tucker and Cassels, JJ., and the appeal was dismissed.

Fortunately the same point is not likely to cause the incurring of legal costs in the future, as the 1940 order puts the matter on a clearer footing and defines "beans" as all beans which are commonly grown for feeding to livestock. One useful principle, however, emerges, and that is that in future orders of a similar nature where commodities are specified in a schedule, the specification is not conclusive that those commodities are covered by the order. For instance, if buttons were by inadvertence included in the schedule to an order concerning feeding stuffs, the schedule would be *pro tanto* inoperative.

A Conveyancer's Diary.

Re LINDSAY.

IN the Chancery Law Reports, which have lately made a welcome appearance after an interval caused by enemy action, there appear two cases both dealing with the affairs of the same realty settlement, *Re Lindsay* (No. 1), at p. 170, and (No. 2), at p. 119. The latter of these cases concerns the incidence, as between capital and income, of the cost of repairs to buildings on settled land. It is a case in which capital was held to be liable, although on a narrow view one might well have thought that the expenses would fall on income, and so is likely to find a fairly general welcome.

The estate in question seems to have been a large one at and near Shepperton and included a number of cottages about a hundred years old which had been in a bad state. In 1936 and 1937 (in consequence of the then recent Housing Acts) the local authority served notices on the tenant for life threatening to condemn some of these cottages as unfit for habitation unless they were connected to the main sewer and reconditioned. The tenant for life and the trustees apparently considered whether it would not be better to pull the cottages down altogether and build new ones, which could fairly clearly have been paid for out of capital under S.L.A. Sched. III, Pt. I, para. (xxii), but decided in the end to comply with the local authority's notices. The decision is stated to have been that of the tenant for life, in which the trustees concurred.

Now, as is known to everyone who has embarked on repairs to houses, one thing leads to another. Thus, damp-courses were required by the local authority; but putting them in did damage to the plaster, and one way and another a great deal of work was in fact done and £5,000 was spent. A substantial number of the items were ones which in the ordinary way would fall on a tenant for life, though a quantity of them would have fallen on capital. The trustees came to the court asking how these expenses should be borne. Farwell, J., referred first to S.L.A., s. 83, which provides that "improvements authorised by this Act" are the works mentioned in Sched. III "or any works for any of the purposes mentioned in that Schedule and any operation incident to or necessary or proper in the execution of any of those works or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes." In plain language, one is not confined to doing the exact things mentioned in the Schedule, but if one is doing any of them one may "make a job of it." Now, since "cottages for labourers, farm servants and artisans employed on the settled land or not" is an "improvement" under Sched. III, Pt. I, para. (xi), "reconstruction, enlargement or improvement" of any such cottages is also an authorised improvement by virtue of para. (xxi), which says that "reconstruction, enlargement or improvement of any of the works" (i.e., those mentioned in the previous twenty paragraphs) is also an authorised "improvement." The question was whether the work done was an improvement of the cottages in the sense in which the word is used in para. (xxi). The learned judge refused to attempt a general definition of what might fall within para. (xxi), but said that the word "improvement" taken by itself means

"something which is more than an ordinary repair which a tenant for life does or an occupier of a dwelling-house or property habitually does from time to time in order to keep the place tidy, watertight and the rest of it." But he thought that in a case where such work had been done and had incidentally involved painting and repapering, one cannot dissect the bill and throw part of the cost on capital and part on income. This decision is a helpful one and will certainly encourage those responsible for settled land to be thorough in making improvements. I do not quite see, however, why reliance was only placed on the provisions cited: I should have expected para. (xxii) also to be useful.

There was another point in *Re Lindsay* (No. 2). One of the houses on the estate was empty, and, to enable it to be let, a number of alterations and additions were made to it which were not of a structural character. Unfortunately, it is not stated what the things actually were that were done, but I conceive that to instal electric light in a house, for example, or to put in a bathroom or something of that kind, would not involve structural operations. The question was whether the non-structural works that were done could be paid for out of capital under Sched. III, Pt. I, para. (xxiii), which includes among authorised "improvements," "Additions to or alterations in buildings reasonably necessary or proper to enable the same to be let." Now, in the old Settled Land Act there was a provision in identical terms, except that it was introduced by the immaterial words "making any." This old provision had been held on a number of occasions, culminating in the decision of the Court of Appeal in *Re Blagrave* [1903] 1 Ch. 560, to cover *structural* operations only. In *Re Blagrave*, for example, the installation of electric light was held not to come within the provision. "Wolstenholme" says, in effect, that *Re Blagrave* is still good law in respect of para. (xxiii), and most of us had felt that we could not advise otherwise unless and until there was a reported decision to the contrary. That decision has now been given by Farwell, J., in *Re Lindsay* (No. 2). The learned judge pointed out that the present Settled Land Act contains another very similar provision, viz., Sched. III, Pt. II, para. (v), which speaks of "*Structural* additions to or alterations in buildings reasonably required, whether the buildings are intended to be let or not or are already let." It was a reasonable deduction that Parliament had intended to alter the law on the point to which Pt. I, para. (xxiii) relates. It inserted the word "structural" in Pt. II, para. (v), and, therefore, may be taken to have omitted it deliberately in the other place. The reasoning thus adopted by Farwell, J., clears up a position about which many practitioners had felt doubts. One may perhaps say, with great respect, that one can seldom predict with confidence that deductions from the omission of words in one of two similar statutory provisions will find favour with the court. Indeed, it had been felt in the present instance that they were not likely to do so in view of the fact that the same omission had occurred in the old Act, and the missing word had been supplied by judicial construction.

For example:—

1. If the installation is required to enable the premises to be let, it may be paid for out of capital without recoupment from income under Pt. I, para. (xxiii).

2. If the installation is not necessary to enable the premises to be let, it cannot be paid for out of capital (with optional recoupment), under Pt. II, para. (v), as the works are not structural, but the installation (other than lamps and decorative fittings) can be paid for out of capital, with compulsory recoupment from income, under Pt. III, para. (ii).

It will be observed that there is a much laxer standard for the employment of capital where the works are necessary to enable the premises to be let than if they are already let (unless the tenancy is ending), or are already occupied by the tenant for life. That is, of course, reasonable, as the arrangement enables a building that is an investment to go on being a remunerative investment notwithstanding the decay of years or rises in the current standard of living. Paragraph (xxiii) of Pt. I cannot be invoked unless there is, at the time of the works being done, an instruction to let the premises, be they the principal mansion house, or some other house, or buildings of some other kind: see per Chitty, S., in *Re de Teissier* [1893] 1 Ch. 153, at p. 158, approved by the Court of Appeal in *Re Gerard* [1893] 3 Ch. 252. If the tenancy is coming to an end, and the tenant sends a letter saying that he will not stay on unless the works are done, that will be sufficient; in such a case it is not necessary that the premises should be actually empty (see *Re Calverley* [1904] 1 Ch. 150).

One point may be borne in mind in connection with the change in the law now held to have been made by para. (xxiii), though it is not mentioned in *Re Lindsay* (No. 2). Before 1926, money received by way of damages for breach of covenant by a lessee of settled land went to the tenant for life as a "windfall," with the consequence that at the end of a tenancy he would normally be in funds from having received the payment for dilapidations. Accordingly, it was only right that he should be expected to redecorate the place and do all the minor repairs that landlords usually do for a new tenant. Since 1925, however, under S.L.A., s. 80, such payments are capital money, and it would be hard on the tenant for life to expect him to pay the same outgoings as before, while the fund that was in former days usually available for them is taken by the trustees and invested.

Landlord and Tenant Notebook.

COURTS (EMERGENCY POWERS) ACT, 1939. RENT CLAIMED "BY VIRTUE OF A CONTRACT."

Two decisions of the Court of Appeal have, since the year began, interpreted the words "by virtue of a contract" in relation to restrictions on the right to execute judgments for rent in the Courts (Emergency Powers) Act, 1939, s. 1. They are *Smallman* v. *Embassy Cinema (Tottenham Court Road), Ltd.*, 85 SOL. J. 289, and *Humberstone Estates, Ltd.* v. *Allen* [1941] W.N. 108. In the one case reliance was placed on the proviso to subs. (2), in the other on the proviso to subs. (1), each of which has occasion to use the words mentioned. In the one case the point was essentially "under what contract was rent claimed?"; in the other "was rent claimed under a contract at all?"; in each there was at least one reversal of a decision of a lower tribunal.

In *Smallman* v. *Embassy Cinema (Tottenham Court Road), Ltd.*, it appeared that the plaintiff landlord had entered into a building agreement with two individuals early in 1939, which provided that they should erect a cinema and then either take a lease (form in schedule) or nominate someone else who would accept such lease. A few weeks after the war had begun and the Courts (Emergency Powers) Act, 1939, come into force, the defendant company was formed, was nominated by the builders and accepted a lease. Rent being in arrear, the plaintiff obtained judgment (presumably for possession), and applied for leave to enforce it. The application savours of raising a giant in order to slay him, for the question was whether he proposed to proceed to exercise, in the words of s. 1 (2) of the Act, a remedy available in consequence of a default in the performance of an obligation arising *by virtue of a contract* made after the commencement of the Act; and his own case was that he was not. The master agreed with him, the judge in chambers reversed the master, and the Court of Appeal restored the master's decision.

The defendants had, as Greene, M.R., pointed out, chosen after the outbreak of war to assume the obligations of this lease, and the fact that it had, as matter of history, originated in the building agreement was irrelevant.

It is important to note that the learned Master of the Rolls concluded his judgment by observing that if the lease had been granted to the original lessees, "different considerations would have applied, because they were contractually bound to take the lease."

This implies, I take it, that relief would then have been available; and such an authority as *Adams* v. *Hagger* (1879), 4 Q.B.D. 480 (C.A.)—which, be it noted, was decided before the abolition of the doctrine of *interesse termini*—gives ample support for the view that the liability of the grantee of a building lease who is identical with the builder under the agreement for that lease commences when the agreement is made. For in that case the builder, having undertaken by an instrument not under seal to hold the land until the execution of the lease at the rent and subject to the conditions to be contained in the lease, was held liable for the amount of the rent as under a collateral contract, though he had never even taken possession of the land.

And if there be any building tenants whose agreements were made before the war and who cannot, as could and did the builders in *Smallman* v. *Embassy Cinema (Tottenham Court Road), Ltd.*, find someone else to hold the baby, it would seem that the best course would be to accept the lease and then, if necessary, claim relief under the Courts (Emergency Powers) Act, 1939, s. 1. For none of the provisions in that section appears to be designed to meet the case of an action and judgment for specific performance: subs. (1) deals with payments of sums of money; subs. (2) with a variety of remedies, including distress, taking of possession of property, and re-entry upon land; subs. (3) with forfeiture for non-payment of rent (and, as amended, recovery by mortgagees).

The facts of *Humberstone Estates, Ltd.* v. *Allen* were that the plaintiffs took, in February, 1940, an assignment of a term granted by the defendants to the assignor in 1937, and on their defaulting the defendants obtained judgment for rent, and proceeded to execute it without seeking leave. The plaintiffs applied for an injunction, were granted an interim injunction *ex parte* by Atkinson, J., which was discharged by Hawke, J., when the question of its continuance till the hearing of the action arose; and the Court of Appeal restored it.

The plaintiffs' case was that the judgment was for the recovery of a sum of money (s. 1 (1)); the defendants invoked proviso (*b*), contending that the judgment was for the recovery of a debt which had become due *by virtue of a contract* made after the commencement of the Act. This contention was based, of course, on the proposition that the debt became due by virtue of the assignment of February, 1940. This proposition was negatived by the Court of Appeal because the assignment in question created no new contract of tenancy, and no contractual relationship between plaintiffs and defendants; the landlords sued not by privity of contract, but by privity of estate.

This is a useful reminder of the effect of assignment of the term, sometimes lost sight of. The reasoning can, in fact, be supported by the sixteenth century authority of *Walker's case* (1587).

3 Co. Rep. 22*a*: "between the lessor and the assignee of the lessee . . . is privity in respect of estate only . . . for no contract was made between them." Perhaps one reason why this has been lost sight of is the common practice by which assignees of terms enter into covenants with the landlord to pay the rent; frequently a landlord makes this a condition of his consent, though it is extremely doubtful whether such a stipulation would pass the test of "not to be unreasonably withheld."

We thus have useful authority on the scope of s. 1 of the Courts (Emergency Powers) Act, 1939, in relation to claims for rent when the tenant's obligation to pay it is referable or referred to an instrument made since the Act came into force.

WAR DAMAGE AND DILAPIDATIONS.

THE attention of readers, particularly of those who have written to us on the subject, may usefully be drawn to the short report of a decision of Hillbery, J., given at the foot of col. 2, p. 2 of *The Times* of 22nd July. The page in question is the "Home News" page, and the report forms no part of the paper's Law Reports, but in deciding whether the frustration of a landlord's intention to demolish premises, such frustration being due to war conditions, affected his claim for dilapidations, the learned judge appears to have taken much the same view of the wording of L.T.A., 1927, s. 18, in particular of the unfortunate "would" in the phrase "would . . . have been pulled down," as was suggested in an article on "War Damage and Dilapidations" in the "Notebook" of 8th February last (85 SOL. J. 66).

Our County Court Letter.

CHILD'S INJURY FROM DOG BITE.

IN *Mackay* v. *Ladell*, recently heard at Thirsk County Court, the claim was for £50 as damages in respect of a bite from the defendant's dog. The plaintiff was a young child, and her case was that she had been suddenly attacked, without provocation, by the defendant's dog. The latter was driven off by a boy, the plaintiff's brother, but the plaintiff's injury from the bite had caused shock and pain, involving medical treatment. The defendant's case was that, while regretting the incident and its consequences, he had no knowledge of any vicious propensity in the dog, which had previously been quiet. Liability was accordingly denied. His Honour Judge Gamon held that, in the absence of proof of scienter, the defendant was not liable. Judgment was given accordingly, with costs.

ARTHRITIS AND TOTAL INCAPACITY.

IN *Crang* v. *Philip & Son*, at Torquay County Court, the applicant had had an accident, as a result of which his left hand and arm were almost useless. An arthritic condition had developed in the left shoulder, and, as the applicant was a left-handed man, he was unable to obtain work. The respondents, however, had offered him light work at his pre-accident wage. The case had therefore been previously adjourned, to enable the applicant to try the work. The evidence was that the work was painting, and the applicant had had to give up after two hours owing to the pain. It was pointed out, for the respondents, that they were ready to show the applicant every consideration, to enable him to recover his strength. The question, therefore, was whether a genuine attempt had been made to do the work offered. His Honour Judge Thesiger was satisfied that the applicant had acted reasonably, and an award was accordingly made as for total incapacity, viz., 35s., plus 8s. for two children, with credit for payments already made, with costs.

REFUSAL OF MEDICAL TREATMENT.

IN *J. Brockhouse & Co., Ltd.* v. *Farnell* at West Bromwich County Court, an application was made for termination of the compensation on the ground that incapacity had ceased. The accident had happened in 1938, and the respondent had sustained a fractured leg; but the applicant's case was that he had refused to undergo treatment and had refused to discard caliper and crutches. The respondent denied that he had refused treatment, and, having to enter the witness box on two sticks, it was obvious he could only do light work, if offered. His Honour Judge Caporn observed that the respondent apparently considered he knew better than the doctors. His alleged nervousness and apprehension had not retarded his recovery, and an order was made as asked.

LUMP SUM FOR OLD INJURY.

IN *Turner* v. *Bull*, at Trowbridge County Court, the respondent had been bitten in the arm by a horse on the 26th March, 1934. The pre-accident wages as a farm carter were 50s., but there were deductions of 10s., leaving a net sum of 40s. An operation was performed in 1938, but the respondent was now aged sixty-one, and he could only do the "easy milkers" among the cows, and could not use a scythe. He was willing to accept £75 in full settlement, but His Honour Judge Kirkhouse Jenkins, K.C., refused to record this agreement. Subsequently, at Warminster County Court, an agreement for the payment of £120 and £5 5s. was recorded.

To-day and Yesterday.

LEGAL CALENDAR.

28 July.—On the 28th July, 1779, James Mathison, one of the cleverest banknote forgers ever brought to justice, was hanged at Tyburn. He made a speech which took up some minutes acknowledging his guilt and hoping for Divine forgiveness. He also warned others to avoid the crime for which he suffered, and expressed forgiveness of his prosecutors. He had carried on a long and successful course of forgery, and the particular crime of which he was eventually convicted was uttering a counterfeit twenty-pound note. So perfect was the copy that even the cashier and the entering clerk of the Bank of England could not positively swear that the note was false. The watermark baffled papermakers, and had he not lost his head and made admissions to the magistrate, he could not have been convicted.

29 July.—John Clarke, the gardener of a gentleman living near Bromley, in Kent, was hanged on the 29th July, 1796, for the murder of Elizabeth Mann, his master's dairymaid. They had been courting, and a few days before her death she had appeared very much distressed because Clarke had not paid so much attention to her. Then one day she was found dead in the dairy with a deep wound in her throat and a cord round her neck. Bow Street officers satisfied themselves that it was not a case of suicide, and Clarke, on being questioned, contradicted himself as to his movements on the fatal day. Some rope found in his tool-shed corresponded to that which was round the girl's neck. He was convicted at the Maidstone Assizes.

30 July.—A particularly sensational trial concluded at the Old Bailey on the 30th July, 1931, when Lord Kylsant, a director of the Royal Mail Steam Packet Company, was convicted of publishing a prospectus, inviting the public to subscribe to the issue of debenture stock in the company, which he knew to be false in a material particular in that it concealed the true position of the company, with intent to induce people to entrust property to the company. Mr. Justice Wright sentenced him to twelve months' imprisonment. The case involved a good deal of highly technical company law, but the essence of the charge was that the statement complained of was designed to imply that for ten years there had been an annual profit of £500,000, whereas for seven years there had been a heavy loss. In the words of counsel, "the old gentleman business was not making money, and the old gentleman was living on the savings of his prudent middle age."

31 July.—Charles Swinfen Eady, the son of a surgeon, was born at Chertsey on the 31st July, 1851. He became Lord Swinfen and Master of the Rolls.

1 August.—Dionysius Lardner was a well-known figure in the scientific-literary world of the mid-nineteenth century. Irish and versatile, he was as erratic as he was brilliant. Logic, metaphysics, ethics, mathematics and physics all fell within his sphere. He lectured on the steam engine; he was educated for the law; he took holy orders; he occupied the chair of national philosophy and astronomy at London University; he edited the Cabinet Cyclopædia; he knew all about steamships and railways. In the midst of all this, when he was over forty-five years old, he found time to elope with Mary Heaviside, the attractive wife of a cavalry officer. The husband's action for damages, heard at Lewes Assizes on the 1st August, 1840, before Mr. Baron Gurney, was the sensation of the year. Damages of £8,000 were awarded. When his own wife, from whom he had been twenty years separated, divorced him and Mary's husband had divorced her, the pair married.

2 August.—In 1884, England was in the grip of the Fenian terror, which reached its height when a portmanteau deposited in the left-luggage office at Victoria Station blew up, causing considerable damage. After a widespread police hunt, two Irishmen named Egan and Daly were arrested with explosives in their possession, and some letters suggesting a connection with the conspiracy. They were convicted at Warwick Assizes of being in possession of dynamite and sent to penal servitude, Egan for twenty years and Daly for life.

3 August.—On the 3rd Augut, 1732, "the Assizes ended at Newcastle, when two received sentence of death, viz., one for house-breaking and one for horse-stealing. Three were cast for transportation."

The Week's Personality.

Though he fell short of greatness, Lord Swinfen was an excellent judge—learned, expeditious and courteous. He became a Justice of the Chancery Division in 1901, a member of the Court of Appeal in 1913, and Master of the Rolls in 1918. In the following year, just after being raised to the peerage, he died at the comparatively early age of sixty-eight. To the end he retained a remarkably youthful appearance, and might easily have been passed for little more than half his actual age. His most noticeable characteristic was an extraordinary efficiency. As an advocate he was one of the most successful Chancery barristers. As a judge he often cleared his lists in a third of the time taken by some of his brothers. Yet while his decisions were often bold and novel, he was rarely over-

ruled. His talents might well have made him Chancellor, but he was no politician, nor in any sense a public figure, so that to the world in general he was but little known. The fact was that he was oddly deficient in those elusive qualities personality and individuality. Merit and efficiency he had. He always did the right thing quickly and thoroughly, and with a skill which could not be overlooked. He might be said to have been the incarnation of efficiency, ideal as a practical judge, anxious and able to get on with his work. His kindly geniality, his youthful vigour, his absence of any affectation made him well liked throughout his career.

A Great Figure Goes.

The peculiarities of legal history makes one fear that posterity may do rather less than justice to the memory of Mr. William Upjohn, K.C., who died recently at a great age. He was one of the greatest and most successful advocates of his day but, since the weeds of anecdote survive everything else, it is all too likely that he will be remembered only for the phenomenal length of his speeches and for a peculiarly emphatic style which on occasion could rise to actual violence. Of course a man who more than once plainly threatened the Court of Appeal with reversal in the House of Lords (for he well knew that his cases could stand the expense) was obviously a fighter. In one great case during the last war he addressed the Court for no less than forty-five days (nearly a third of the duration of the hearing) and engaged in tremendous personal encounters with his opponent so that for a while they were not on speaking terms. Once after a difficult battle the solicitor instructing him observed brightly that the result achieved was "in consonance with justice," only to be quenched with the rebuke: "A solicitor of your experience ought to know that it was not a question of justice but of advocacy. That is everything." On another occasion, it is said, a judge, with whom he had just had several skirmishes, said as he was leaving, "I trust that you do not mean any disrespect to the Court." "I am trying not to show it, my lord," was the reply. But I strongly suspect that the original of that tale was the eccentric Oswald, the specialist in contempt of Court.

A Contemporary Character.

Upjohn was never compared to Oswald, but he has sometimes been linked with his contemporary the great Danckwerts, never likely to be forgotten as a Temple legend—rough, hasty, generous, an encyclopædia of statute and case law and physically bulky in proportion. Theobald Mathew's pencil caught his figure in more than one happy sketch, and another who knew him has described him "standing in a Revenue Court holding in his left hand a volume of statutes while he ran a fat forefinger down the various sections to which he was referring." Encounters with Danckwerts were fraught with "manifold and multifarious danger," for Bench as well as for Bar. Mr. Justice Ridley he held in particular abhorrence. Once this judge was a member of a Divisional Court presided over by Lord Alverstone. At the adjournment the Lord Chief Justice asked Danckwerts whether he objected to the hearing being continued by two judges only. "Which two?" was the reply. Another legend was that he once kicked a managing clerk for what he considered tactless behaviour. Nothing but this trait kept him from the high judicial office which his talents could have commanded. His peculiarities were certainly more marked than any of Upjohn's.

Notes of Cases.

CHANCERY DIVISION.

In re **Hall; Holland** *v.* **Attorney-General.**

Morton, J. 7th May, 1941.

Revenue—Land settled by will on widow—Widow pays estate duty on property—Releases statutory charge for duty—Death of widow—Whether estate duty payable in respect of released charge—Finance Act, 1894 (57 & 58 *Vict., c.* 30), *ss.* 5 (2); 9 (1) (5) (6); 22. Summons.

The testator, who died in 1909, by his will, after appointing his wife and two friends to be executors and trustees, gave his hereditaments known as the M Estates to them upon trust to pay the net rents to his wife during her life and after her death upon trust for his children and issue as she should appoint. The M Estates were valued at £43,000 and the sum of £7,921 was paid in respect of estate duty on the property. This sum was paid by the widow out of her own moneys in 1911. The widow by her will appointed unsold portion of the M Estates to her daughter. Certain capital moneys had been previously appointed to a grand-daughter. The widow died in 1938, and this summons was taken out by her daughter as her executrix asking whether on the true construction of the Finance Act, 1894, she was accountable for estate duty in respect of the sum of £7,921. The Attorney-General and the grand-daughter were defendants.

Morton, J., after reviewing the circumstances in which the sum of £7,921 was paid and subsequent dealings with the property by the widow, said that, as she was at no time competent to dispose of the M Estates within s. 22 (2) (*a*) of the Act, no duty was payable in respect of these estates on her death. Notwithstanding the fact that the widow had refused to have a mortgage on the property in 1911, a charge in her favour came into existence automatically under s. 9 (6) of the Act. No authority had been cited which dealt with the means by which such a charge could be released. On the facts the widow's conduct in 1920 amounted to a complete release. It was submitted for the Crown that she must be deemed to have then brought into settlement something worth £7,921. This did not correspond with the facts. It was further submitted that she had made a gift of the £7,921 and had reserved a benefit thereout by contract or otherwise within s. 2 (1) (*c*). Such a claim was ill-founded. If the widow had made a gift the persons interested in the settled property took an immediate benefit to the entire exclusion of the donor. She merely retained her life interest in the settled estate. The sum of £7,921 accordingly was not subject to estate duty.

Counsel: *Harman*, K.C., and *Hubert Rose; J. H. Stamp; Wilfrid Hunt.*

Solicitors: *Kingsford, Dorman & Co.; Solicitor of Inland Revenue.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

Re **Knapton, Knapton** *v.* **Hindle.**

Simonds, J. 13th June, 1941.

Will—Construction—Devise of one house "to each of my nephews and nieces"—No particular house specified—Validity of gift—Method of selection of house by devisees.

Adjourned summons.

The testatrix by her will provided: "I give and bequeath my estate as follows . . . one house to each of my nephews and nieces and one to N and one to F one to my sister one to my brother. . . ." The testratrix had not indicated which house was to go to which devisee or who was to have first choice. This summons raised, *inter alia*, the question whether the respective devises were void for uncertainty and, if not, how the houses should be divided among the devisees.

Simonds, J., said that *Duckmanton* v. *Duckmanton*, 5 H. & N. 219, was sufficient authority to enable him to come to the conclusion that the devises were valid and that the right of selection was given to the several devisees in the order of their names. The matter, however, was complicated by the fact that the initial devise was "one house to each of my nephews and nieces." There were in fact one nephew and two nieces. The above rule could have no application in the case of this gift, because no nephew or niece was named, so that priority could not be given in the order of name. Much of our law in regard to testamentary dispositions had been taken from the civil law. In Roman law there was at least an analogy. According to the Institutes of Justinian II, 20, 23 (*Hunter*, Roman Law, 3rd ed. 927), where several legatees had an option of choice and they differed amongst themselves, the legacy was not lost, but the case was finally to be settled by lot. He considered that he should apply that principle. He construed the gift as a devise of "a house to each of my nephews and nieces, a house to N, my nephews and nieces to have a choice before N." The determination of choice by lot was not in any way contrary to *bonos mores*. Accordingly, he would declare that the several devises were valid and the right of choice was to go in the first place to the nephew and two nieces as they might agree and in the event of disagreement it was to be determined by lot.

Counsel: *Sir Norman Touche; W. F. Waite; R. J. T. Gibson; Danckwerts.*

Solicitors: *Long & Gardiner; Official Solicitor; Treasury Solicitor.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

KING'S BENCH DIVISION.

Lock *v.* **Jones (Inspector of Taxes).**

Lawrence, J. 20th March, 1941.

Revenue—Income tax—Development of land by formation of company—Land sold at profit to company by shareholder—Profit left in company as a debt—Whether debt assessable to tax before realisation—Income Tax Act, 1918 (8 & 9 *Geo.* 5, *c.* 40), *Sched. D, Cases I and II, r.* 3.

Case stated by Commissioners for the General Purposes of the Income Tax Acts.

In 1934 the appellant entered into a contract to buy certain land for £37,500 and paid £1,000 deposit on it. Two other persons then agreed to join him in developing the property. A company was accordingly formed with a capital of £100, each of the three parties contributing £5,000 towards the company's funds by way of loan; £33 of the £5,000 was to be payment for shares in the company, each party being equally interested; the £1,000 deposited by the appellant was to be credited against the £5,000 which he was to lend. Further, the appellant was to sell the property to the company for £50,000, the profit on the sale of £12,500 to be treated, as between him and the company, as a loan to be repayable as might be agreed. In the books of the company the appellant thus appeared as a creditor for £17,467, and the other two parties as creditors for £4,967 each. The Crown, in computing the profit of the appellant as a builder for the purposes of an assessment to

income tax under Sched. D to the Income Tax Act, 1918, included the £12,500 as a profit accruing to him from the purchase and re-sale of the property. At the time of the assessment the property had not been resold by the company, nor had the appellant been paid the £12,500. He appealed against the assessment, contending that no profit had accrued to him in the transaction in the material year; that, on the terms of his agreement with the other two parties, no part of the £12,500 had become due or payable at the material time; that in the circumstances, particularly the fact that, because the company had failed to effect a re-sale of the property, its debt to the appellant had at no time been worth its face value; and that the £12,500 should thus not be included in the computation of profit. The Crown contended that the £12,500 was a trading profit accruing to the appellant at the date of the sale of the property to the company; and that the value of the debt had not been shown to be at the material time less than £12,500. Reliance was placed on *California Copper Syndicate, Ltd.* v. *Harris* (1904), 6 F. 894, 5 T.C. 159; *Scottish Provident Institution* v. *Farmer* [1912] S.C. 452, 6 T.C. 34; *Leigh* v. *Inland Revenue Commissioners* [1928] 1 K.B. 73; *Collins (Edward) & Sons, Ltd.* v. *Inland Revenue Commissioners* [1925] S.C. 151, 12 T.C. 773; and *Naval Colliery Co., Ltd.* v. *Inland Revenue Commissioners* (1928), 138 L.T. 593. The Commissioners held that a profit of £12,000 had accrued at the material time, and upheld the assessment. The taxpayer appealed.

LAWRENCE, J., said that the Commissioners had found as a fact the £12,500 was a trading debt to be included at its full value in the trading accounts for the material year. The appellant relied on *Harrison* v. *Crank (John) & Sons, Ltd.* [1937] A.C. 185, and sought to have the case sent back for the Commissioners to review their finding and give him a further opportunity of proving that the debt was not on the material date worth its face value. The facts in the case cited were quite different. That case could not be treated as laying down that such a debt as that in the present case was not to be valued, and must be left out of account until it was actually realised. The House of Lords had expressly recognised the propriety of such a valuation, saying that it was only if the valuation was impossible that the debt should not be included for the material year. The difficulty of valuation was much greater in that case than here. There its value depended on the solvency of a purchaser only able to find £35 towards the cost of a £625 house. Here the value of the debt depended primarily on the value of the property. The Commissioners were therefore right in valuing the debt under r. 3 of the Rules Applicable to Cases I and II of Sched. D. It was conceded that on the authorities it was a general rule that each year must be treated by itself, that prospective losses were not to be taken into account, and that, strictly, if, after a debt had been valued, it was subsequently realised at a higher figure, the excess was to be disregarded. The appeal must be dismissed.

COUNSEL: *Heyworth Talbot, the Solicitor-General* (Sir William Jowitt, K.C.), and *R. P. Hills.*

SOLICITORS: *D. Cameron, Kemm & Co.*, for *Dubeic Wood*, Abridge, Som.; *The Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Heritage *v.* **Claxon.**

Viscount Caldecote, C.J., and Tucker, J. 16th July, 1941.

Firearms—Member of Home Guard in possession of pistol without certificate—No evidence that possession enjoyed in capacity as member—Offence committed—Firearms Act, 1937 (1 *Edw.* 8 *and* 1 *Geo.* 6, *c.* 12), ss. 1, 5.

Case stated by Sussex justices.

Informations were preferred by the appellant, a police superintendent, under s. 1 of the Firearms Act, 1937, against the respondent Claxon, charging him with unlawfully having in his possession a firearm and ammunition to which Pt. I of the Act applied, although he did not then hold a firearm certificate. At the hearing of the information the following facts were established. On the 15th July, 1940, the respondent had in his possession a .32 Browning automatic pistol and seven rounds of ammunition for it. He had no certificate in force in respect of those articles. He was a member of the Home Guard, but when he had the pistol and ammunition in his possession he was not performing any duties in his capacity as such. There was no evidence before the justices that the respondent had the articles in his possession in his capacity as a member of the Home Guard or in any capacity as a person in His Majesty's service. The respondent tendered no evidence. It was contended on his behalf that, as he was a member of the Home Guard and as such a person in the service of His Majesty, s 5 of the Act applied to exempt him from s. 1. It was contended for the appellant that, as there was no evidence before the justices to show that the respondent had the pistol and ammunition in his possession in his capacity as a member of the Home Guard or in any capacity as a person in His Majesty's service, the justices should convict him. The justices holding that, because the respondent was a person in the service of His Majesty, the relevant parts of s. 1 of the Act of 1937 did not apply to him, dismissed the informations. The police superintendent appealed. Section 32 of the Act of 1937 lays down the firearms and ammunition to which Pt. I of the Act applies. Section 1 prohibits possession of a firearm or ammunition to which Pt. I of the Act applies without possession of a firearm certificate in force. Section 5 exempts from that prohibition as to possession "persons in the service of His Majesty in which capacity as such." By reg. 2 (3) of the Defence (Local Defence Volunteers) Regulations, 1940, "members of the Local Defence Volunteers shall be members of the armed forces of the Crown. . . ."

VISCOUNT CALDECOTE, C.J., said that the justices, finding that there was no evidence that the respondent had the articles in his possession in his capacity as a member of the Home Guard, made it clear that the exemption conferred by s. 5 did not apply to him. In other words, if a member of the Home Guard in his capacity as such had in his possession a firearm without a licence he committed no offence thereby, but there was no evidence in the present case that the respondent had the pistol and ammunition in his possession in that capacity. It was easy to suppose a case in which it was possible for a member of the Home Guard to have in his possession at all times a firearm in his capacity as a member of the Home Guard; but that gave no justification for the decision of the justices in this case.

TUCKER, J., agreeing, said that there was nothing in the court's decision to lend colour to the view that a member of the Home Guard might not lawfully be in possession of a weapon not actually issued to him by his officers, but in such a case if he was to be exempt from s. 1 of the Act of 1937 he must establish that he was in possession of the weapon in his capacity as a member of that force. There was no need to speculate on the cases in which it might be possible to prove that. It had not been proved here.

COUNSEL: (There was no appearance by or for the respondent.)

SOLICITORS: *Walmsley & Stansbury*, for *J. E. Dell & Loader*, Shoreham.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION. (DIVORCE.)

Chipchase, P. M. *v.* **Chipchase, C. R.**

Henn Collins, J. 12th June.

Divorce—Nullity—Wife previously married—First husband not heard of for ten years—Maiden name given in banns—No intention to defraud—Contrary to statute—Marriage Act, 1823 (4 *Geo.* 4, *c.* 76), s. 22.

Husband's petition for nullity on the ground that the woman with whom he went through the ceremony of marriage on 11th August, 1928, was then a married woman. The wife had given her maiden name in the banns, but it subsequently became known that a man whom she had previously married was still alive.

The wife had previously applied to the magistrates for maintenance on the ground of the present petitioner's alleged adultery, desertion and wilful neglect to maintain. The magistrates dismissed the summons, but on appeal the matter was remitted to the magistrates to consider (*a*) whether, her first husband not having been heard of for ten years, there was anything in the evidence to rebut the presumption that he was dead; and (*b*) whether there had been that intentional concealment of identity by both parties which is essential for avoidance of the marriage, having regard to the words "knowingly and wilfully" in s. 22 of the Marriage Act, 1823. (*Chipchase* v. *Chipchase* [1939] P. 391.)

HENN COLLINS, J., said that at the bottom of p. 397 of the report of *Chipchase* v. *Chipchase, supra,* the learned President, when dealing with the proper construction of s. 22 of the Marriage Act, 1923, said: "The same appears even more clearly in the judgment of Sir Jenner Fust in *Orme* v. *Holloway* (1847), 5 Notes of Cas. Ecc. & Mat. 267, 271, where he says the construction of this Act is that, in order to set aside a marriage on the ground of undue publication of banns, it is necessary for both parties to be cognisant of the fraud; it is necessary first to prove that there has been fraud, and, secondly, that both parties were cognisant of the fraud and knowingly and wilfully entering into the marriage without due publication of banns." His lordship said that he found the wife's story more convincing than the husband's. She gave her maiden name because it would have raised difficulties if she had described herself as a married woman. It was not done in the ordinary sense of endeavouring to conceal the fact that she was the woman known by that name, because that was the name by which she was known to her associates. But one of the purposes of the Act of Parliament would be defeated if it was open to a person to say: "Well, I am known here in my parish by such-and-such a name, although if I gave another persons might make the most uncomfortable and difficult inquiries." The marriage was not a marriage in law and there would be a decree of nullity.

COUNSEL: *H. G. Garland; C. O. Herd.*

SOLICITORS: *Wingfields, Halse & Trustram; Large & Co.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

His Hon. JUDGE LAWSON CAMPBELL has been appointed Chairman of the Isle of Ely Bench of Quarter Sessions in succession to His Hon. H. G. Farrant, resigned.

Mr. CLAUD RAMSAY WILMOT SETON, M.C., Puisne Judge in Jamaica, has been appointed Chief Justice of Nyasaland, on the retirement of Mr. Alban Musgrave Thomas. He was called by Gray's Inn in 1928.

Correspondence.

USE OF PARCHMENT.

Sir,—The experience of my firm of the effect of water on parchment suggests to my mind that solicitors and others should consider seriously whether it may not be desirable to discontinue the use of parchment for engrossments of title deeds and other valuable documents.

In the recent destruction of our offices our strong room was badly damaged and many of the contents have suffered seriously from water. The effect of water upon parchment is deplorable. If badly saturated the parchment becomes nothing but an offensive smelling mass of slimy filth. We were advised by an expert whom we consulted to destroy a number of deeds at once as there was no possibility of doing anything with them. On the other hand, paper of almost any kind stands up to water in an astonishing manner. No matter how badly saturated, paper can apparently be handled and dried, and even when sodden with water the writing (or printing) on it is usually quite legible.

I should imagine that in these days the risk of damage from water is considerably greater than the risk of damage from fire. Many strong rooms may be fire-proof, but I doubt if one is proof against water, and being almost invariably constructed in basements the danger from flooding cannot be overlooked. In this respect safes may possibly have an advantage over strong rooms. I can see no advantage in the use of parchment as compared with good quality paper, while on the other hand paper appears to have a distinct advantage over parchment. If, as I fear must be the case, the experiences of other solicitors have been similar to the experience of my firm, I suggest that our profession should seriously consider whether the time has not come to abandon the use of parchment.

GERALD L. ADDISON.

London, E.C.4.
14th July.

Books Received.

Family Inheritance. By Laurence Tillard, Barrister-at-Law. Being a reprint from "Six Vital Acts of 1938" of the Inheritance Family Provisions Act, 1938, annotated with the addition of the Rules made and cases decided thereunder. 1941. pp. 134 and Index (4). London: Hamish Hamilton (Law Books), Ltd. Price 5s., net.

"Taxation" Key to Income Tax and Surtax. Finance Bill Edition. 1941. pp. 171. London: Taxation Publishing Co., Ltd.; Jordan & Sons, Ltd. Price 4s. 6d. net.

Loose-Leaf War Legislation. Edited by John Burke, Barrister-at-Law. 1940-41 volume. Part 12. London: Hamish Hamilton (Law Books), Ltd.

War Damage Compensation. By Maurice Share, B.A. (Hons.) Oxon., of Gray's Inn, Barrister-at-Law. 1941. pp. 94. London: George Newnes, Ltd. Price 1s., net.

The Public General Acts and the Church Assembly Measures of 1940. London: H.M. Stationery Office. Price 9d., net.

The War Damage Act, 1941. By H. Samuels, M.A., of the Middle Temple, Barrister-at-Law. 1941. Demy 8vo, pp. xv and (including Index) 259. London: Sir Isaac Pitman & Sons, Ltd. Price 10s. 6d. net.

The War Damage Act, 1941. By T. J. Sophian, of the Inner Temple, Barrister-at-Law. 1941. Demy 8vo, pp. xii and (including Index) 312. London: Jordan & Sons, Ltd. Price 10s. 6d., net.

The War Damage Act, 1941. By H. Heathcote-Williams, M.A., of the Inner Temple, Barrister-at-Law. 1941. Demy 8vo, pp. xl and (including Index) 200. London: Property Owners' Protection Association, Ltd. Price 7s., net.

The Excess Profits Tax. By H. E. Seed, A.C.A., A.S.A.A. Second Edition. 1941. Demy 8vo, pp. xxvi and (including Index) 348. London: Gee & Co. (Publishers), Ltd. Price 20s., net.

The Conduct of Meetings. By Cecil A. Newport. 1941. Crown 8vo, pp. vi and 120. London: The English Universities Press, Ltd. Price 3s. 6d., net.

The Law List, 1941. pp. xi and (including Index) 2003. London: Stevens & Sons, Ltd. Price 15s., net.

Parliamentary News.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 29th July:—
Colonial War Risks Insurance (Guarantees).
Financial Powers (U.S.A. Securities).
War Damage (Extension of Risk Period).

HOUSE OF LORDS.

Landlord and Tenant (War Damage) (Amendment) Bill [H.C.]
Amendmens reported. [29th July.

Pharmacy and Medicines Bill [H.C.]
Read Second Time. [29th July.

War Damage to Land (Scotland) Bill [H.C.]
Read First Time. [29th July.

Liabilities (War-Time Adjustment) Act, 1941.

LIABILITIES ADJUSTMENT OFFICERS (IN PARENTHESES) AND THEIR OFFICES.

BIRMINGHAM: Rooms 22, 23, 25, 29 and 32, County Buildings, Corporation Street. (Mr. F. C. Ormrod.)
BOSTON: c/o Messrs. Lucas & Sharp, Market Place. (Mr. F. L. Oldham.)
BRIGHTON: 20, Princes Street. Sub-offices—Bognor: 1st Floor, 5-6, Clarence Road; Eastbourne: 4, Hyde Gardens; Hastings: 34-35, Wellington Square. (Mr. C. L. Nankivell.)
BRISTOL: 3, Priory Road. (Mr. F. A. Webber, O.B.E.)
CANTERBURY: Winton, 42, New Dover Road. Sub-office—Dover: 1st Floor, Leahurst, London Road, Kearsney. (Mr. F. C. Wells.)
CARDIFF: 42, Park Place. (Mr. F. J. Alban, C.B.E.).
FOLKESTONE: 18-20, Church Street. (Mr. B. H. Bonniface.)
IPSWICH: Rooms 49-51, 2nd Floor, Lloyd's Chambers. Sub-office—Colchester: 1st Floor, Britannic Assurance Company Office, Crouch Street. (Mr. C. B. L. Prior, J.P.)
HULL: Daily Mail Buildings, Jameson Street. (Mr. I. D. McIlwraith.)
LEEDS: Cabinet Chambers (3rd Floor), Lower Basinghall Street, 46-7, Boar Lane. (Mr. N. M. Higham.)
LIVERPOOL: Address not yet fixed. (Mr. J. Allcorn.)
LONDON (1) (CENTRAL): 6, Bedford Square, Bloomsbury, W.C.1. (Mr. D. Freeman Coutts.)
LONDON (2) (SOUTH): 36, Sydenham Road, Croydon. (Mr. C. W. Bird.)
LONDON (3) (WEST): 25, Haven Green, Ealing. (Mr. D. H. Evans.)
LONDON (4) (EAST): 25, Argyle Road, Ilford. Sub-office—Southend: 2nd Floor, 12-14, Warrior Square. (Mr. J. M. Clarke.)
MANCHESTER: Rooms 45, 45A and 46-51, Atlantic Chambers, 7, Brazennose Street. (Mr. J. S. Peacock.)
NEWCASTLE-ON-TYNE: Norfolk House, 90, Grey Street. (Mr. A. Brodrick Thompson.)
NORWICH: 10A, Castle Meadow. (Mr. F. R. D. Walter.)
PLYMOUTH: 9, St. Lawrence Road. (Mr. D. F. Nash.)
SCARBOROUGH: Pavilion Chambers, 2, Pavilion Terrace. (Mr. J. Douglas Munby.)
SOUTHAMPTON: 18, Archers Road. Sub-office—Portsmouth: Rooms 47 to 52, 2nd Floor, Pearl Buildings, Commercial Road. (Mr. B. Chilton.)
SWANSEA: Metropole Chambers, Salubrious Passage, Wind Street. (Mr. C. F. Lloyd.)

War Legislation.

STATUTORY RULES AND ORDERS, 1941.

No. 1043. **Aliens** Order in Council, July 18.
No. 966/S.31. **Allied Powers** (Maritime Courts) (Scotland) Rules, July 18.
No. 1028/L.19. **Chancery of Lancaster** Rules (No. 1), June 30.
E.P. 1011. **Consumer** Rationing (No. 3) Order, July 15.
E.P. 1012-1018 (as one document). **Consumer Rationing Order**, 1941. General Licences, July 15.
E.P. 1010. **Control of Iron** and Steel (No. 15) Order, July 12.
E.P. 1005. **Control of Leather** (No. 2) Order, 1941. Direction No. 4, July 14.
No. 998/L.18. **County Court** Fees (Amendment) Order, July 11.
E.P. 1039. **Defence (Game)** Regulations, 1941. Order in Council, July 18.
E.P. 1023. **Defence (General)** Regulations, 1939. Order in Council, July 18, adding Regulation 78.
E.P. 1038. Defence (General) Regulations, 1939. Order in Council, July 18, adding Regulations 56AB, 60DA and 60L, and amending Regulations 5, 22, 27 and 54B.
E.P. 1040. **Defence (Loans)** Regulations (Isle of Man), 1941. Order in Council, July 18.
E.P. 963. **Emergency Powers** (Defence) Acquisition and Disposal of Motor Vehicles Order, July 4.
E.P. 1051. **Essential Work** (General Provisions) (Amendment) Order, July 18.
E.P. 1050. **Food** (Current Prices) Order, 1941. Amendment Order, July 19.
E.P. 1020. **International Labour Force** (Registration of Austrians, Germans and Italians) Order, July 11.
E.P. 1042. **Ministry of Aircraft Production** Orders (Exemptions) (No. 1) Order, July 16.
No. 988. **Motor Vehicles** (Authorisation of Special Types) Order (No. 2), July 8.
E.P. 1008. **Securities** (Restriction and Returns (Amendment) (No. 2) Order, July 17.
E.P. 1022. **Tea** (Licensing and Control) Order, July 15.

STATIONERY OFFICE.

Statutory Rules and Orders, List of (Period January 1 to June 30, 1941).